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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,182	05/14/2001	David A. Fell	659-700	8195

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/10/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/855,182

Applicant(s)

FELL ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-39, 43-45 and 49 is/are pending in the application.
- 4a) Of the above claim(s) 1-16, 18-39, 45 and 49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 28 April 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14. 6) ☐ Other:

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## DETAILED ACTION

### *Election/Restriction*

1. Applicant's election without traverse of the species of Figures 18-19 with detachable primary connections in Paper No. 9 was previously acknowledged.
2. Claims 1-16, 18-21, 23-24, 26-28, 30-31, 33, 39 and 45 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 9. Furthermore, claims 22, 25, 29, 32, 34-38 and 49 are also now withdrawn for the reasons set forth infra.

Regardless of Applicant's remarks bridging pages 13-14 of the 4-28-03 response, Applicant elected the species of Figures 18-19 and has not clearly indicated a desire to change such election. The species of Figures 18-19 has an absorbent element whose outer surface is cover 434. The first and second portions of the absorbent element, i.e. adjacent bond 78, are not on the outer surface of the element as now claimed in claims 1-16, 18-39 and 49 because such portions are between the cover 434 and backsheet 42. Therefore, such claims are withdrawn as being drawn to the nonelected species, e.g. Figure 20.

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### *Specification*

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

4. It is noted that the amendments requested to be entered at page 13, line 21 and page 15, line 13(2nd) did not match the text at that location. The locations of such amendments were changed in red ink to correspond to the locations where the text appeared.

### *Drawings*

5. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 4-28-03 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

6. The drawings are objected to because throughout the Figures, structure has still been denoted using more than one numeral separated by a comma, e.g. in Figures 5 and 6, "70,90" and in Figure 12, ~~"78,80"~~. A line or arrow from each numeral to the structure it denotes should be set forth, i.e. no commas. In Figure 11, 50 does not denote the edge of layer or fold 48, i.e. see page

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10, lines 9-10. In Figure 3, 86 as now proposed does not denote the bodyside surface as described, see page 19, lines 25-26. In Figure 8, the structure denoted by the numerals, 46, 48, 52, 54, 356, 358, 770, 790 appears to be incorrect because such structure underlies other structure, i.e. the lines leading from each numeral should be dashed. Contrary to Applicant's remarks in the 4-23-03 response the structure is below other structure, i.e. sheet 42. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### *Description*

7. The use of the trademark VELCRO(R)(page 8) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown either with the trademark being in all capital letters or accompanied by a symbol, i.e. not both.

8. The disclosure is objected to because of the following informalities: The specification is replete with informalities. For example: 1) Are "Alliance" (page 9, line 15) and "Oasis"(page 9, line 28) trademarks? If so, they should be properly denoted as such.

Appropriate correction is required.

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*Claim Objections*

9. Claims 43-44 are objected to because of the following informalities: In claim 43, "garment side" and "bodyside" should be --garment-side-- and --body-side--. Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 43-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Clemson.

Claims 43 and 44: chassis is 12, absorbent element is 20 and pad (not shown, see page 3, line 14), and connection is stitching, i.e. sentence bridging pages 2-3 and page 3, lines 3-4, or absorbent element is pad and connection, and thus first location, is overlap, see page 3, lines 3-21. See also response to Applicant's remarks infra which response is also included as part of this rejection.

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*Response to Amendment*

12. Applicant's remarks on pages 13-16 have been considered but are either deemed moot in that the issue discussed has not been reraised or deemed nonpersuasive for the reasons set forth supra. In the paragraph bridging pages 16-17 Applicant argues Clemson does not teach a first location spaced laterally inward from the opposite side edges but rather is stitched along its sides edges and teaches away from the claimed structure. However such remarks are deemed nonpersuasive in that they are narrower in scope than the claim language and the teachings of Clemson. First, it is noted that it is not claimed that the element is only connected at the first location, i.e could also be connected at other locations. The term "location" was defined by Applicant in the paragraph at page 14, line 6. The terms "along" and "spaced laterally inward" were not assigned a specific definition by Applicant and therefore the broadest ordinary, i.e. dictionary, definition is held to apply. "Along" as defined by the American Heritage is "in line with" or "over, through or by the length of", "By" is defined as "next to, close to", "Spaced" is defined as "a blank or empty area". Therefore the claims require a first location laterally inward of the side edges and an area therebetween but the area can be any size greater than zero because the claim does not set forth how big such space is. Note Figures 18-19 which show connection/location 90/70 very close to edges 347 and 351. Clemson teaches a cover 20 stitched along its side edges to the body 12. "Along" defined as set forth above includes in line with or by, i.e close to, the length thereof, i.e. Clemson is stitched by or close to the length of the side edges

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thereof. Also at least one end, the rear end, of the cover is also stitched across its end.

Therefore, at the very least, the Clemson device, e.g., at the one rear end, is connected at a first location spaced laterally inward of the side edges. However it is also the Examiner's opinion that Clemson teaches a first location along the length of the side edges of cover 20 also because "by or close to" includes "spaced laterally inward" although that space may not be very large. Again the claims do not require a specific space size.

### *Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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Any new grounds were necessitated by the amendments to claims 1, 22 and 32.

14. Any inquiry concerning this communication should be directed to K. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

July 5, 2003

K.M. Reichle  
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